

REMARKS

Reconsideration of this application is respectfully requested.

Claims 1-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chiv (US 5,454,347). The examiner states as follows:

Regarding claims 1, 2 and 7, Chiv discloses a cart base frame having an upwardly extending rear frame section having a handle mounted (see figure 1, element 5 and 23), at least three wheels rotatably mounted on cart base frame (see figure 1, element 47), a base wall, left and right side walls mounted on and extending upwards from said base wall and a front wall mounted on and extending upwards from the base wall and extending between and connecting forward portions of the left and right side of the walls (see figure 1, element 60), wall openings on the left and right side and front wall adjacent the base wall being generally square in shape with approximately equal heights and widths for improved structural strength (see figure 1, element 63), left and right walls including generally cross sectionally arcuate rear flange sections which extend outwards and rearwards (see mid section of element 20), rear flange sections at least partially covering an adjacent portion of the rear frame section to substantially prevent items in the plastic basket from falling out of the plastic basket through a gap between the left and the right side walls and the rear frame (see figure 2, element 28 and 29), a basket rim support wire extending circumferentially around and passing through upper portions of the left and right side walls and front wall, the ends of said basket rim support wire connected to and mounted on the rear frame section adjacent an upper portion for increasing the structural strength of the plastic basket on the rear frame section of the cart base frame (see figure 1, element 74), a cart base frame including an upwardly extending center basket support strut which engages the base wall (see figure 1, element 35), base wall further including a reinforced plate section operative to provide additional structural support for the connection of the center basket support strut therefore strengthening the improved plastic basket shopping cart (see column 3, lines 5-10).

Chiv does not disclose the left and right walls and the front wall having a plurality of general rectangular wall openings extending through the left and right side walls and front wall, wall openings generally having a height greater than their width. At the time of the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the plastic shopping cart to include rectangular wall openings extending though with equal heights and widths therefore improving the structural strength of the plastic shopping cart. Applicant has not disclosed that having a plurality of rectangular wall openings extending through the left and right side walls and front walls with openings generally having a height greater than their width provides an advantage, is used for a particular purpose, or solves a stated problem.

Regarding claim 3, Chiv discloses a rear wall mounted on the rear frame section of the cart base (see figure 2, element 69). Regarding claim 4, Chiv discloses an arcuate rear flange section having a cross sectional curvature approximately equal to the curvature of the adjacent portions of the rear frame section such that the rear flange sections are generally continuously adjacent to the rear frame (see figure 1, element 5). Regarding claims 5 and 10, Chiv discloses a left and right walls and front wall include a plurality of intersecting generally horizontal and generally

1 vertical ribs, and vertical ribs extending to adjacent top edges of each left and right
2 side walls and front wall, horizontal ribs on each of the left and right side walls
3 extending to adjacent front wall (see figure 1, element 60). Regarding claims 6 and
4 11, Chiv discloses a channel formed in the upper portion of the left and right side
5 wall and front wall, channel adapted to receive basket rim support wire extending
6 circumferentially around and passing through upper portions of the left and right
7 side walls and front wall within the channel in order to provide additional stability
8 to plastic basket (see figure 1, element 81). Regarding claim 8, Chiv discloses a rear
9 wall mounted on the rear section of the cart base (see figure 2, element 69).
10 Regarding claim 9, Chiv discloses a cross sectionally arcuate rear flange section
11 having a cross sectional curvature approximately equal to the curvature of the
12 adjacent portions of the rear frame section such that the rear flange sections are
13 generally continuously adjacent to the portions of the rear frame section (see figure
14 1, element 5).

15 Applicant has amended independent claims 1 and 7 to more distinctly claim those features
16 of his invention which are unique and novel over the prior art. Specifically, applicant has amended
17 claims 1 and 7 to further state that the

18 each of said left and right side walls of said plastic basket including generally cross-
19 sectionally arcuate rear flange sections mounted on and extending ~~which extend~~
20 outwards and rearwards therefrom, said rear flange sections each at least partially
21 covering an adjacent portion of said rear frame section to substantially cover and
22 close the gap between each of said left and right side walls and said adjacent portion
23 of said rear frame section thereby substantially preventing ~~prevent~~ items in said
24 plastic basket from falling out of said plastic basket through a gap between said left
25 and right side walls and said rear frame section;

26 Applicant has made these changes to point out to the examiner that the present invention
27 includes features which are patentable, particularly over the cited patents. Applicant respectfully
28 disagrees with the examiner's stated arguments in respect to claims 1 and 7, as the Chiv invention
does not show rear flange sections of the plastic basket which at least partially cover an adjacent
portion of the rear frame section. Instead, Chiv discloses nothing to prevent objects in the basket
from falling out of the gap between the basket and the rear frame section (See Figure 2 in particular),
and as the present invention specifically claims such rear flange sections, Chiv cannot be seen to
render the present invention obvious.

Moreover, for the examiner to suggest that one could modify Chiv to include such rear flange
sections, the suggestion must be found in the prior art. In fact, contrary to the examiner's stated
position, no such suggestion is found in the cited prior art anywhere. As an extension of this

1 opinion, Applicant further would like to state that the modifications of the prior art necessary to
2 function as does applicants' invention are not found anywhere in the cited prior art, but instead are
3 only found in Applicant's disclosure, particularly in light of the currently amended claims. The
4 primary reason for including the rear flange sections in Applicant's invention is because the
5 connection of the basket to the frame necessarily includes a small gap between the back edge of the
6 left and right side walls and the rear frame section, and this gap is responsible not only for the loss
7 of smaller materials therethrough but also is responsible in those devices found in the prior art for
8 catching the extremities of small children therein which can potentially cause injury to the child, a
9 highly undesirable feature of the prior art. The present invention solves this problem by including
10 the rear flange sections, and these are not shown in the prior art.

11 It is clear that the examiner has used the applicant's invention as a "template" to define
12 various elements in order to reject applicants' claims. As the Federal Circuit stated in In re Fitch;
13 "The mere fact that the prior art may be modified to reflect features of claimed invention does not
14 make modification, and hence the claimed invention, obvious unless the desirability of such
15 modification is suggested by the prior art. It is impermissible to use the claimed invention as an
16 instruction manual or "template" to piece together the teachings of the prior art so that the claimed
17 invention is rendered obvious. This court has previously stated that 'One cannot use hindsight
18 reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed
19 invention.'" In re Fitch, 23 USPQ2d 1780, 1783-4, *citing from* In re Gordon, 733 F.2d at 902, 221
20 USPQ at 1127 and In re Fine, 837 F.2d at 1075, 5 USPQ2d at 1600. Clearly, any suggestion to
21 modify the prior art to include the rear flange sections of applicant's invention are found only in the
22 applicants' specification. Therefore it is seen that not only is applicant's invention not disclosed in
23 the prior art, but applicant's invention is not even fairly suggested by the prior art. For all of these
24 reasons, it is believed that the rejections of claims 1 and 7 have been overcome.

25 Applicant also disagrees with the examiner's statement that:

26 *"Applicant has not disclosed that having a plurality of rectangular wall*
27 *openings extending through the left and right side walls and front walls with*

1 *openings generally having a height greater than their width provides an advantage,*
2 *is used for a particular purpose, or solves a stated problem."*

3 In fact, Applicant states in his specification that the purpose for the rectangular wall openings
4 is as follows:

5 "It has been found that the generally rectangular shape of wall opening **62**
6 permits sufficient structural strength of the side walls **54a** and **54b** and front wall **56**
7 while also conserving construction material, namely the plastic construction material
8 used in connection with the plastic basket **50**, thus keeping the cost of construction
9 down while simultaneously providing sufficient structural strength for the plastic
10 basket **50**." (p. 11, lines 15-21 of applicant's specification).

11 Therefore, unless the examiner can cite to an example in the prior art that discloses such a
12 combination of rectangular and square wall openings positioned as disclosed by applicant, applicant
13 respectfully disagrees that such a modification would have been obvious and believes that claims
14 **1** and **7** are allowable for this reason also.

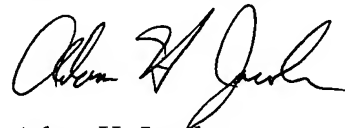
15 Claims **2-6** and **8-11** were rejected along with claims **1** and **7**, but applicant wishes to clarify
16 that he does not claim exclusive rights to the features defined in those claims independently, but
17 rather only in combination with the present invention as defined in claims **1** and **7**. For the reasons
18 expressed above in connection with claims **1** and **7** and for the structural limitations added by these
19 claims, claims **2-6** and **8-11** are believed to be allowable with claims **1** and **7**.

20 Applicant has invented a substantial improvement over the prior art, one which has not been
21 conceived previously, and one which provides a superior plastic shopping cart basket. Because the
22 connections between the left and right side walls and base wall and front wall and base wall are
23 significantly strengthened, the useable life span of the shopping cart is extended and therefore the
24 operating costs for the shopping cart are decreased as compared to those devices found in the prior
25 art. Also, because the connection of the plastic basket to the metal frame significantly reduces and
26 in many cases eliminates gaps between the metal frame and rear of the plastic basket, the loss of
27 items from the cart interior is generally prevented and, possibly even more importantly, the

1 opportunity for children to catch their extremities in the gaps of the shopping cart is greatly reduced.
2 Nowhere in the prior art is such an elegant and straightforward solution for the strength and gap
3 problems of shopping carts disclosed or suggested, and therefore it is believed that the present
4 invention provides a substantial improvement over those devices found in the prior art and therefore
5 is deserving of patent protection.

6 Applicant is mailing this amendment after expiration of the three month response period but
7 within the third month's extension of time permitted by 37 C.F.R. § 1.136 and accompanied by the
8 fee set forth in 37 C.F.R. § 1.17(a). This application is thus believed to be in condition for allowance
9 of all claims remaining herein, and such action is respectfully requested.

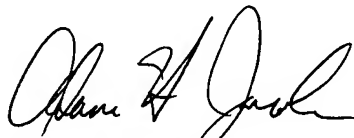
10 Respectfully submitted,

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18 CERTIFICATE OF MAILING

19 I hereby certify that this Amendment for an IMPROVED PLASTIC BASKET SHOPPING
20 CART, Serial N^o 10/789,313, was mailed by first class mail, postage prepaid, to Mail Stop Non-Fee
21 Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 21st
22 day of March, 2006.

23 

24 Adam H. Jacobs